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1776 K STREET, N. W.
WASHINGTON, D. C. 20006
(202) 429-7000

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WRITER'S DIRECT DIAL NUMBER
(202) 828-3155

FACSIMILE
(202) 429-7049

July 10, 1996

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William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Applications of Liberty Cable Co., Inc.
(WT Docket No. 96-41)
Bartholdi Cable Co., Inc.

Dear Mr. Caton:

On behalf of Bartholdi Cable Co., Inc. ("Bartholdi"), attached, pursuant to the Order of Administrative Law Judge Richard L. Sippel, are: (1) a "Transmission Services Agreement" between Bartholdi and Freedom New York, L.L.C. ("Freedom"); (2) a "Subcontractor Agreement" between Bartholdi and Freedom; and (3) the transcript of the Pre-hearing Conference of June 13, 1996.

Respectfully submitted,

Michael K. Baker

Michael K. Baker

MKB:Lfh
Attachs.

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REDACTED COPY

February 20, 1996

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Transmission Services Agreement

This Transmission Services Agreement (this Agreement) is made effective as of _____ of _____, 1996, by and between Liberty Cable Company, Inc., a Delaware corporation (Provider), and Freedom New York, L.L.C., a Delaware limited liability company (Customer).

Recitals

A. Customer and Provider entered into the Asset Purchase Agreement pursuant to which Customer has acquired from Provider certain assets of Provider and its affiliates, including Provider's cable television services subscribers.

B. Provider continues to own and operate the Retained Equipment providing for the transmission and reception of fixed microwave services from the Transmission Sites to the Reception Sites and continues to own the Existing Licenses authorizing its operations.

C. Customer provides multichannel video programming distribution services to the Subscribers in connection with which Customer requires certain microwave transmission and reception services.

D. Customer and Provider desire to enter into this Agreement pursuant to which Provider will provide the Services to Customer using the Retained Equipment, on a private carrier basis on the terms and conditions set forth in this Agreement.

Agreement

Now, therefore, in consideration of the foregoing and of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions.**

(a) As used herein, the following terms shall have the following meanings:

Asset Purchase Agreement shall mean that certain Asset Purchase Agreement dated as of February 20, 1996 entered into by Customer, Provider and certain affiliates of Provider.

Authorizations shall mean, collectively, the Existing Licenses and all other licenses, translators, permits, approvals and other authorizations, temporary or otherwise, by the FCC, the FAA or any other federal, state, municipal or other authority with jurisdiction over the Provider, the Retained Equipment or the Services, necessary or appropriate to

authorize the valid and lawful location and operation of the Retained Equipment and the provision of the Services.

Converted Site shall mean any Site to which Customer has terminated the provision of the Services by Provider in accordance with Section 7 hereunder.

Existing Licenses shall mean all FCC and other state or local licenses, translators, permits and other authorizations, temporary or otherwise, currently issued to Provider in connection with Provider's provision of the Services, all of which are listed in Exhibit 2 hereto.

FAA shall mean the Federal Aviation Administration.

FCC shall mean the Federal Communications Commission.

Holdback shall have the meaning assigned to such term in the Asset Purchase Agreement.

LIBOR shall have the meaning assigned to such term in the Asset Purchase Agreement.

Person shall mean an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or agency or instrumentality thereof.

Reception Sites shall mean, collectively, those reception sites listed in Exhibit 1B hereto and identified therein by call sign and building address.

Remaining Holdback shall mean an amount equal to the difference between (a) the Holdback; minus (b) the sum of (i) any amounts previously paid by Customer to Provider pursuant to Section 2.1(c)(i) of the Asset Purchase Agreement; and (ii) any Construction Costs which have been deducted from the amount in clause (b)(i) hereof pursuant to Section 2.1(c)(ii) of the Asset Purchase Agreement.

Retained Equipment shall mean certain 18 GHz microwave private operational fixed transmission and reception equipment listed in Exhibit 1A hereto.

Service Credits shall have the meaning set forth in Section 5 hereof.

Services shall have the meaning set forth in Section 2 hereof.

Service Fee shall mean an amount equal to [REDACTED]

Sites shall mean, collectively, the Reception Sites and the Transmission Sites.

Subscribers shall mean all of Customer's multichannel video programming distribution services customers, including the subscribers acquired from Provider pursuant to the Asset Purchase Agreement.

Transmission Sites shall mean, collectively, those transmission sites listed in Exhibit 1C hereto.

(b) Capitalized terms used in this Agreement that are not otherwise defined in this Agreement shall have the definitions given to such terms in the Asset Purchase Agreement.

2. Responsibilities of Provider. Provider shall:

(a) Provide the following private operational fixed microwave communications services (collectively, the **Services**) to Customer exclusively and to no other Person, on a full-time, private (non-common carrier) carrier basis to each Site until such Site becomes a Converted Site:

(i) the operation of all 18 GHz licensed facilities identified in Exhibit 1A hereto, including all Retained Equipment located at the Sites as well as any new and/or modified licensed facilities at the Sites as may be necessary or appropriate in order to provide wireless transmission and reception services for the transmission of Customer's multichannel video programming services to the Subscribers;

(ii) all maintenance of and technical and engineering support for the Retained Equipment and Sites as may be necessary or appropriate to maintain the Retained Equipment in optimal working condition and to operate the Retained Equipment and the Sites in accordance with the terms and conditions of the Authorizations;

(b) Maintain a level of quality in the provision of the Services equal to that maintained by Time-Warner.

(c) Employ all technical and support services personnel necessary or appropriate for the provision of the Services;

(d) Keep in full force and effect each and every one of the Existing Licenses and obtain from time to time as necessary and keep in full force and effect each and every one of the Authorizations, and defend any and all formal or informal protests or challenges to, suits based upon, or other action arising in connection with, the Authorizations or any alleged failure to obtain and/or maintain any such authority, whether such protest, challenge, suit or action is brought by a regulatory authority or a third party. Notwithstanding the foregoing, if a Site becomes a Converted Site, Provider shall, at Customer's request, discontinue any Authorizations relating solely to such Converted Site;

(e) Maintain in full force and effect during the entire term of this Agreement an insurance policy or policies with respect to the Retained Equipment in such

amounts and coverages as are consistent with industry practice and reasonably approved by Customer, and which policies shall name Customer as an additional insured and as loss payee;

(f) Refrain from taking any action, or agreeing to take any action, that would jeopardize or hinder the provision of the Services, or make the provision of the Services less valuable to Customer;

(g) Not enter into any agreement or arrangement with a third party that conflicts with Customer's rights hereunder;

(h) Develop and implement procedures, and have ultimate responsibility, for any routine maintenance, trouble determination and fault isolation identified as originating with the Retained Equipment;

(i) Furnish information, upon reasonable request, on a continuing basis as required by Customer in connection with the performance of this Agreement;

(j) Take all appropriate measures to avoid damaging or interfering with any property of Customer or any third party in connection with the provision of Services;

(k) Notify Customer in a timely manner of any developments that are material to the provision of the Services, including any matters that affect the continued validity of any of the Authorizations;

(l) Operate the Retained Equipment in a safe and legal manner;

(m) Keep the Retained Equipment in good operating condition and repair and make any and all repairs, renovations, modifications, improvements, relocations, replacements or additions necessary or appropriate to maintain the uninterrupted provision of the Services;

(n) Not convey, assign, transfer or otherwise encumber, directly or indirectly, Provider's interest in this Agreement, the Retained Equipment or the Authorizations, or enter into any agreement to do any of the foregoing;

(o) Provide Service Credits to Customer for the interruption of the Services in accordance with Section 5 hereof;

(p) Take all actions necessary or appropriate to facilitate the interface of the Services and the Retained Equipment with Customer's facilities and equipment, and cooperate in coordinating the provision of the Services to the Subscribers;

(q) Cooperate with Customer in, and take, or refrain from taking any action, as may be necessary or appropriate to facilitate, Customer's efforts to obtain Customer's own licenses, permits and other authorizations for the Sites; and

(r) Transfer and convey to Customers any Retained Equipment relating to a Site upon conversion of that Site to a Converted Site in accordance with the provisions of Section 2.1(e) of the Asset Purchase Agreement.

3. **Responsibilities of Customer.** Customer shall (provided that the Provider is not in default of its obligations hereunder):

(a) Pay the Services Fees, less any applicable Service Credits, at the time or times provided in Section 4;

(b) Reimburse Provider for any reasonable costs incurred in the provision of the Services within thirty (30) days of receipt of written request by Provider, which request must be accompanied by an invoice for or other appropriate evidence of, the costs so incurred;

(c) Provide Provider with continuous and unfettered access to the Retained Equipment and use of any premises owned, leased or otherwise available to Customer solely to the extent necessary to enable Provider to perform its obligations hereunder; and

(d) Provide to Provider, at the Sites, all electrical utilities necessary to operate the Retained Equipment.

4. **Services Fee.** In consideration for the Services to be provided by Provider hereunder, Customer shall pay Provider the Services Fees which shall be calculated and paid on a monthly basis, provided that Customer may deduct from such Services Fees the amount of any Service Credits provided hereunder. Services Fees shall be payable on the first day of each month during the term of this Agreement.

5. **Service Credits.**

(a) Provider will provide credit to Customer (the Service Credits) for the interruption of the Services in accordance with the provisions of this Section. The Services shall be deemed interrupted when they become unusable to Customer, including but not limited to when the Services are unable to be transmitted or received because of a failure or inoperability of any component of the Retained Equipment, and any such failure is caused by the grossly negligent or intentional act or omission of Provider, or the failure of Provider to use its best efforts to maintain the Authorizations needed to provide the Services.

(b) Service Credits for an interruption shall commence when the Customer reports that the Services or the Retained Equipment is inoperative, or when Provider becomes aware thereof, and shall cease when the Services have been restored. It shall be the obligation of Customer to notify Provider immediately of any interruption in Services for which Service Credits are claimed. Before notifying Provider of an interruption, Customer shall make reasonable attempts to ascertain that Customer, a third party, or the equipment or facilities of Customer or a third party are not the cause thereof. Service Credits are applicable only to that portion of the Services interrupted.

(c) For purposes of Service Credits computation, every month shall be considered to have 720 hours. The Customer shall be credited for an interruption at the rate of 1/720th of the monthly charge for the Services for each hour or major fraction thereof that the interruption continues. Calculations of the credit shall be made in accordance with the following formula:

$$\text{Credit} = A/720 \times B$$

"A" = outage time in hours

"B" = total monthly charge for the Services

Customer may offset the Service Credits against any Services Fees due hereunder.

6. **Term.** This Agreement shall commence on the date hereof and shall continue until the earlier of (a) five (5) years from the date hereof or (b) until all Sites become Converted Sites; provided, however, that if, at the end the initial five (5) year period, any Sites remain which are not Converted Sites, then Customer shall have the option to either (i) extend the term of this Agreement for successive periods of one hundred eighty (180) days each upon written notice by Customer to Provider given not less than thirty (30) days prior to the end of the then current expiration of the term or (ii) terminate this Agreement with respect to such remaining Sites, whereupon this Agreement shall terminate, and all Subscribers serviced by such remaining Sites shall vest in Provider.

7. **Conversion.** The provisions of Services to any specified Subscribers from any specified Sites may be terminated by Customer at any time upon written notice from Customer to Provider delivered not less than five (5) days prior to the date of such requested termination. Any termination of this Agreement in connection with any specific Converted Sites shall not affect the payment of the Services Fees hereunder or the provision of the Services hereunder with respect to remaining Sites.

8. **Independent Contractors.** Each of Customer and Provider is and shall remain at all times an independent contractor, and neither Customer nor Provider is an employee, agent or representative of the other. Persons rendering the Services pursuant to this Agreement shall not be deemed employees of Customer, and Provider shall retain the exclusive right of control with respect to persons rendering the Services. Neither party is authorized hereunder, and neither party nor its employees, agents or representatives shall, by exercising its rights hereunder, at any time attempt to act or act on behalf of the other party to bind the other party in any manner whatsoever to any obligations. Neither party nor its employees, agents or representatives shall, by exercising its rights hereunder, engage in any acts which may lead any person to believe that such party is an employee, agent or representative of the other party, its parent corporation, subsidiaries or affiliates; each of Provider and Customer agree to give prompt written notice to the other party upon learning of any confusion by third parties as to the relationship of Provider and Customer.

corporate power and authority to carry on its business and operations and is duly qualified to do business in each jurisdiction in which it is doing business.

(b) **Corporate and Governmental Authorizations.** Provider has full corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to provide the Services contemplated by this Agreement. This Agreement constitutes a legal, valid and binding obligation of Provider and is enforceable against Provider in accordance with its terms. No consent or authorization of, or filing with, any government or regulatory authority or any other entity is required on the part of Provider in connection with Provider's performance of this Agreement, except for those Authorizations listed on Exhibit 2, which is a complete and accurate listing of all such Authorizations.

(c) **No Conflict.** Neither the execution and delivery by Provider of this Agreement nor the provision of Services hereunder (i) violates any applicable law, regulation, order, judgment, injunction, decree, rule or ruling of any governmental authority, (ii) violates any provision of the articles of incorporation or bylaws of Provider, (iii) results in any material respect, in any breach of, or constitutes (with due notice or lapse of time or both) a default under any agreement, instrument, license or permit to which Provider is a party or by which or to which Provider is subject or bound, or (v) requires the consent of any third party.

(d) **Title to Properties; Liens; Condition of Properties.** Exhibit 1A lists all of the equipment used or otherwise necessary to provide the Services. Provider has good and valid title to the Retained Equipment, free and clear of any liens, charges or encumbrances. All of the Retained Equipment is in good working order and repair and complies in all material respects with applicable rules, regulations and standards regarding its intended use.

(e) **Authorizations.** Provider holds all of the Authorizations necessary to own and operate the Retained Equipment for each of the Sites and to provide the Services lawfully and in the manner in which they are now operated and provided. Except as described in Schedule 12(e), there has been no material breach or violation and there is no outstanding material breach or violation of any Authorization.

(f) **Protests.** Except as described in Schedule 12(f), there are no formal or informal complaints, Petitions to Deny, or any other form of formal or informal protests currently pending and/or outstanding against Provider concerning any of the Authorizations. Provider holds all the Authorizations necessary to operate the Retained Equipment and provide the Services. Each and every Authorization is currently in full force and effect.

(g) **Operation in Compliance with Law.** The Retained Equipment has been, is and will be, operated in compliance with all applicable local, state and federal laws, rules and regulations.

(h) **Compliance with Authorizations.** Except as disclosed in Schedule 12(h), none of the Authorizations may be revoked unless Provider breaches the terms and conditions of any such Authorization. Provider is in compliance with the terms and

conditions of all Authorizations. Except as disclosed in Schedule 12(h), there is no legal action or governmental proceeding pending for the purpose of modifying, revoking, terminating, suspending or canceling any of the Authorizations. Except as disclosed in Schedule 12(h), Provider is not subject to notice by a governmental authority of alleged noncompliance with the terms and conditions of any Authorization or any state, federal or municipal law or regulation affecting the operation of the Retained Equipment or the provision of the Services.

13. **Representations and Warranties of Customer.** Customer hereby represents and warrants to Provider as follows:

(a) **Organization of Customer.** Customer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware with full power to conduct its business.

(b) **Authority of Customer.** Customer has the power to execute, deliver, and perform this Agreement.

(c) **Binding Effect.** This Agreement constitutes a legal, valid, and binding obligation of Customer enforceable against it in accordance with the respective terms hereof and thereof, subject to bankruptcy, insolvency, and similar laws of general application affecting creditors' rights and remedies.

(d) **No Violation.** Neither the execution and delivery by Customer of this Agreement nor the consummation of the transactions contemplated hereby or thereby violate or will violate any provision of law applicable to, or any provision of the articles of a corporation or bylaws of Customer.

14. **Miscellaneous.**

(a) **Counterparts.** This Agreement may be executed in counterpart copies, all of which when taken together shall be deemed to constitute one and the same original instruments.

(b) **Waiver.** Any term of this Agreement may be waived by the party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the party against whom enforcement of the waiver is sought. No waiver of any condition, or of the breach of any provision hereof, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy not be deemed the waiver thereof.

(c) **Exhibits.** The terms and conditions of the Exhibits to this Agreement are incorporated herein by reference and shall constitute part of this Agreement as if fully set forth herein.

(d) **Notices.** All notices, demands or requests required or permitted hereunder shall be in writing and shall be deemed duly delivered and received on the date of personal delivery (which shall include delivery by telecopier, with confirmation, or by Express Mail, Federal Express or other recognized overnight courier service that issues a receipt or other confirmation of delivery) to the party for whom such communication is intended, or three (3) business days after the date mailed by certified mail, return-receipt requested, postage prepaid, addressed as follows, or to such other address as a party may request by giving notice in the manner provided in this Section:

If to Provider, to:

575 Madison Avenue
New York, New York 10022
Attention: Howard P. Milstein
Telecopy No.: (212) 891-7224

With a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017
Attention: Philip T. Ruegger
Telecopy No.: (212) 455-2502

If to Customer, to:

c/o RCN Corporation
105 Carnegie Center
Princeton, NJ 08540
Attention: David C. McCourt
Telecopy No.: (609) 734-3808

With copies (which shall not constitute notice) to:

c/o RCN Corporation
Legal Department
105 Carnegie Center
Princeton, NJ 08540
Attention: General Counsel
Telecopy No.: (609) 734-3830

and to:

Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Attention: Andrew D. Lipman, Esquire
David M. Martin, Esquire
Telecopy No.: (202) 424-7645

or such other address or addresses as any party hereto shall have designated by notice in writing to the other parties hereto.

(e) **Amendments.** At any time, this Agreement may be amended or supplemented by such additional agreements, articles or certificates, as may be determined by the parties hereto be necessary, desirable or expedient to further the purposes of this Agreement, or to clarify the intention of the parties hereto, or to add to or modify the covenants, terms or conditions hereof or to effect or facilitate any governmental approval or acceptance of this Agreement or to effect or facilitate the filing or recording of this Agreement or the consummation of any of the transactions contemplated hereby. In order to be effective, any such instrument or amendment must be in writing and signed by both parties.

(f) **Entire Agreement.** This Agreement and its Exhibits and the other documents referenced herein constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof. No representation, warranty, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party hereto shall be bound by, or be liable for, any alleged representation, warranty, promise, inducement or statement of intention not embodied herein or therein.

(g) **Severability.** If any provision, clause, or part of this Agreement shall be invalidated, the remainder of this Agreement shall not be affected thereby; provided, however, that if such invalidation goes to the essence of this Agreement, the parties shall negotiate in good faith to reconstitute the Agreement in a form that satisfies applicable requirements and is, to the maximum extent possible, consistent with the original intentions of the parties.

(h) **Binding Effect, Benefits.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

(i) **Assignment.** This Agreement, and the rights and obligations hereunder of the parties hereto, shall not be assigned or delegated (by operation of law or otherwise) in whole or in part, including but not limited to, assignments or delegations effecting the assignment or transfer of control of the Authorizations, by either party without the prior written consent of the other party hereto.

(j) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(k) **Headings.** The headings appearing at the beginning of several sections contained herein have been inserted for identification and reference purposes and shall not be used to determine the construction or interpretation of this Agreement.


(l) **Construction.**

(i) In construction of this Agreement, words used in the singular shall include the plural and the plural, the singular, and "or" is used in its inclusive sense, in all cases where such meanings would be appropriate.

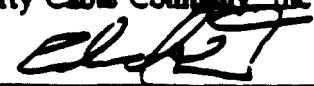
(ii) This Agreement has been negotiated and prepared by the Provider and the Customer, and if any provision of this Agreement requires judicial interpretation, the court interpreting or construing the provision shall not apply the rule of construction that a document is to be construed more strictly against the party who prepared the document.

In witness whereof, this Agreement has been duly executed and delivered by or on behalf of the parties hereto as of the date first above written.

Freedom New York, L.L.C.

By: 
Name: _____
Title: _____

Liberty Cable Company, Inc.

By: 
Name: _____
Title: _____

REDACTED COPY

SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement (the "Agreement") is entered into as of this 14 day of May, 1996, by and between BARTHOLDI CABLE COMPANY, INC., a New York corporation (the "Licensee"), and FREEDOM NEW YORK, L.L.C., a limited liability company organized under the laws of the State of Delaware (the "Subcontractor").

WITNESSETH:

WHEREAS, the Licensee and the Subcontractor are parties to a certain Asset Purchase Agreement dated as of February 20, 1996 (the "Asset Purchase Agreement"), pursuant to which the Subcontractor purchased, among other rights and property, the rights to provide certain services to the Licensee's former subscribers (the "Subscribers"); and

WHEREAS, pursuant to the Transmission Services Agreement entered into by the Licensee and the Subcontractor dated as of February 20, 1996 (the "Transmission Services Agreement"), Subcontractor provides multichannel video programming services to certain of the Subscribers using, in part, radio transmission facilities owned, controlled and operated by Licensee (the "Bartholdi Network") pursuant to certain licenses and other authorizations issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, the Licensee desires to retain the Subcontractor to perform, on behalf of the Licensee, certain technical and maintenance support services in connection with Licensee's operation of the Bartholdi Network, which services shall be subject to the control, supervision and approval of the Licensee as described herein and in compliance with all appropriate FCC rules and regulations; and

WHEREAS, the Licensee and the Subcontractor have contemplated entering into a Subcontractor Agreement since entering into the Asset Purchase Agreement and have been negotiating the terms of this Subcontractor Agreement since that date and have now completed those negotiations;

NOW, THEREFORE, in consideration of the promises and the mutual undertakings herein contained, the Licensee and the Subcontractor hereby agree as follows:

1. APPOINTMENT OF SUBCONTRACTOR

1.1 **Retention of Subcontractor.** The Licensee hereby retains the Subcontractor, and the Subcontractor hereby agrees to provide or cause to be

provided the services specified in Section 2 with respect to the Bartholdi Network on the terms set forth in this Agreement

2 SUBCONTRACTOR'S DUTIES AND COMPENSATION

2.1 Subcontractor's Duties As requested by the Licensee and subject to the oversight, direction and control of the Licensee, the Subcontractor shall be responsible for the maintenance and repair of the Bartholdi Network. Consistent with the foregoing and subject to the limitations set forth in this Agreement, the Subcontractor shall, consistent with sound engineering practices, use its best efforts to provide, or enter into contracts with others to provide, for the successful operation of the Bartholdi Network, and shall render or obtain all services and perform or cause to be performed all duties as shall be necessary or appropriate for the foregoing, including without limitation, the following:

- (a) Arranging, in consultation with and under the direction of the Licensee, for the hiring of employees of the Subcontractor, or any other independent contractors or subcontractors, necessary to perform the Subcontractor's duties under this agreement, and arranging for the supervision and any necessary training of such personnel.**
- (b) Procuring general business liability insurance insuring against all risks normally insured against by corporations of similar size engaged in similar lines of business.**
- (c) Arranging for the maintenance of the Bartholdi Network according to technical standards reasonably acceptable within the industry and to the Licensee and for the provision of all necessary or appropriate repairs and replacements.**
- (d) Arranging for appropriate office record keeping, bookkeeping and accounting.**
- (e) Taking any steps which the Licensee reasonably requests and deems necessary.**
- (f) Providing periodic reports to Licensee regarding the services being provided by Subcontractor in connection with the operation of the Bartholdi Network.**

- g) Generally, doing any and all other acts as may reasonably be necessary or appropriate to carry out the duties and responsibilities of the Subcontractor contemplated hereunder, whether or not specifically enumerated herein

2.2 **Compensation.** For the provision of services described herein, effective the Effective Date, Licensee shall pay Subcontractor fees, which shall be calculated, billed and paid on a monthly basis. Employees of Subcontractor shall maintain hourly and daily time records to document services provided to Licensee. Each employee's time so expended shall be charged as follows:

- (a) For all regular hours worked by employees, an amount equal to the employee's basic hourly rate plus an amount determined by applying to the basic hourly rate a factor to cover loadings for FICA, State Unemployment Compensation, Federal Unemployment Compensation, Workers Compensation Insurance, Blue Cross/Blue Shield, Major Medical Group Life Program, Long-Term Disability Insurance, Employee Dental Program, qualified employee benefit plans, the costs of nonproductive time (i.e. holidays, vacation days, sick time, etc.), depreciation on or lease expenses associated with building, office furniture and equipment, house services, utilities, office supplies, out-of-pocket expenses (i.e. dues, subscriptions, etc.) and technical training. For purposes of this Agreement, this amount shall be the employee's "Loaded Labor Rate." The Loaded Labor Rate for each employee is subject to periodic change without notice.
- (b) For all overtime hours worked by non-salaried employees, an amount equal to the Loaded Labor Rate, which shall include additional payroll and benefit costs due to overtime, multiplied by the number of overtime hours.
- (c) For all salaried employees, Loaded Labor Rates shall be adjusted by a factor for unpaid overtime hours.

LICENSEE'S CONTROL AND RESPONSIBILITIES**3.1 Licensee's Responsibilities and Controls.** Licensee shall:

- a) Retain full responsibility for, and all control of, the Bartholdi Network in compliance with applicable FCC rules, regulations and orders and fulfillment of all of its duties and obligations as an FCC licensee, including maintaining all necessary FCC licenses and authorizations.
- (b) Take reasonable measures to protect the physical security of the Bartholdi Network.
- (c) Retain ultimate responsibility for decisions affecting the operation of the microwave facilities, including, but not limited to, the execution of contracts and site leases, major expenditures, equipment acquisition, and preparation and filing of any necessary FCC applications.
- (d) Receive all monies and profits derived from operation of the Bartholdi Network, except that Subcontractor may offset any amounts due to Licensee pursuant to the Transmission Services Agreement by the amount of its fees for technical and maintenance services provided by Subcontractor to Licensee pursuant to this Agreement.
- (e) Pay all excise, sales, use, property or other similar taxes that may be levied by a governmental authority on the Bartholdi Network or on the services rendered pursuant to the Transmission Services Agreement.
- (f) Pay all financing obligations of the Bartholdi Network, including all operating expenses.

3.2 Licensee's Control Over Management. In the performance of the responsibilities performed by the Subcontractor pursuant to Section 2.1:

- (a) The Subcontractor understands that ultimate direction and control over the Bartholdi Network shall remain vested in the Licensee, and the Subcontractor shall do nothing inconsistent therewith.

- b) The Subcontractor shall provide any and all information which the Licensee may request with respect to the Bartholdi Network or the Subcontractor's performance of its duties hereunder
- c) The Subcontractor understands and agrees that (i) all facilities and equipment used or employed in the construction or operation of the Bartholdi Network and purchased by or on behalf of the Licensee shall remain the property of the Licensee (ii) this agreement grants no ownership, use or access to the Bartholdi Network other than that necessary to perform Subcontractor's Duties as specified herein and (iii) the Licensee shall continue to have unfettered use and access to all said facilities and equipment and to all facilities or equipment leased or owned by the Subcontractor to the extent that the same are used in connection with the Bartholdi Network.
- (d) To the extent that employees of the Subcontractor are utilized in any aspect of the operation of the system, any such employees of the Subcontractor shall be immediately removed from providing any services to the Bartholdi Network upon the Licensee's reasonable finding that good cause for removal exists. The Subcontractor agrees to maintain appropriate worker's compensation and disability insurance to satisfy the potential claims of any and all employees and/or agents of the Subcontractor or its affiliates.

4. TERM AND TERMINATION OF AGREEMENT

4.1 Effective Date. This Agreement is deemed to be effective as of March 12, 1996.

4.2 Term. This Agreement shall commence as of the Effective Date and shall continue until December 31, 2001 unless sooner terminated as provided herein or unless extended pursuant to Section 4.3.

4.3 Renewals. Upon its scheduled expiration date, this Agreement shall be automatically renewed for successive one year periods unless the Licensee or Subcontractor provides not less than sixty (60) days' prior written notice of non-renewal or unless sooner terminated as provided herein.

4.4 Termination for Cause by Licensee. Each of the following events shall constitute a default by the Subcontractor under this Agreement and shall entitle the Licensee to terminate this Agreement immediately with written notice to the Subcontractor (specifying the reasons therefor) without any further obligation or liability to the Subcontractor (subject to Section 2 hereof for all amounts accrued but unpaid through the termination date):

- a) The material breach of this Agreement by the Subcontractor, or a failure by the Subcontractor to perform the duties required under this Agreement, or any act or omission by the Subcontractor causing any material injury to the Licensee; or
- (b) The Subcontractor's dissolution, liquidation, bankruptcy or insolvency, including (i) the filing of a voluntary or involuntary petition seeking liquidation, reorganization, arrangement or a readjustment, in any form, of its debts under any federal or state bankruptcy, insolvency or similar law; or (ii) the making of any assignment for the benefit of its creditors.

4.5 Termination for Cause by Subcontractor. Each of the following events shall constitute a default by the Licensee under this Agreement and shall entitle the Subcontractor to terminate this Agreement immediately with written notice to the Licensee (specifying the reasons therefor), without any further obligation or liability to the Licensee (subject to Section 3 hereof for amounts accrued but unpaid through the termination date):

- (a) The material breach of this Agreement by the Licensee which has continued for a period of thirty (30) days after the Licensee's receipt of written notice thereof from the Subcontractor, or
- (b) Licensee's dissolution, liquidation, bankruptcy or insolvency, including (i) the filing of a voluntary or involuntary petition seeking liquidation, reorganization, arrangement or a readjustment, in any form, of its debts under any federal or state bankruptcy, insolvency or similar law; or (ii) the making of any assignment for the benefit of its creditors.

4.6 **Termination Without Cause.** This Agreement may be terminated without cause upon the express mutual written consent of the Licensee and the Subcontractor, which consent shall not be unreasonably withheld.

5 **LIABILITY.**

5.1 **Subcontractor's Liability.** The Subcontractor shall indemnify, defend and hold harmless the Licensee and any of its officers, directors, employees or affiliates against any damages incurred by reason of the Subcontractor's misconduct or negligence.

5.2 **Licensee's Liability.** The Licensee shall indemnify, defend and hold harmless the Subcontractor and any of its officers, directors, employees or affiliates against any damages incurred by reason of the Licensee's misconduct or negligence.

5.3 **Limitations on Liability.** Notwithstanding any liability imposed upon the Licensee or the Subcontractor pursuant to other agreements between them, in no event will either party hereto be liable to the other party under this Agreement for any indirect, special, incidental or consequential losses or damages, including, without limitation, loss of revenue, loss of customers, or clients, loss of goodwill or loss of profits arising in any manner from this Agreement and the performance or nonperformance of obligations hereunder.

6. **GENERAL PROVISIONS**

6.1 **Entire Agreement.** This Agreement constitutes the full and entire understanding and agreement among the parties with regard to the subjects hereof.

6.2 **Amendments and Modifications.** This Agreement may be terminated, amended, modified and supplemented only by written agreement, specifically referring to this Agreement, signed by the parties hereto.

6.3 **No Agency.** At no time shall either party have authority to make any contracts or commitments on behalf of or as an agent for the other party.

6.4 **No Joint Venture.** Nothing in this Agreement shall be construed to make the Licensee and the Subcontractor joint venturers or to impose on either of them any liability as such.

6.5 **Choice of Law** This Agreement shall be governed by and construed under the laws of the State of New York without reference to the choice of law principles thereof

6.6 **Successors and Assigns** The provisions shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. This Agreement may not be assigned or subcontracted by either party without the express written consent of the other party (which consent may be withheld for any reason) and the giving of such consent shall not relieve the assigning or subcontracting party of its obligations hereunder. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

6.7 **Notices** All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effective upon personal delivery or mailing by registered or certified mail, return receipt requested, postage prepaid, addressed to:

(a) if to Licensee:

575 Madison Avenue, Third Floor
New York, NY 10022
Attention: Howard Milstein
Telecopy No. 212-891-7224

With a copy (which shall not constitute notice) to:

Constantine & Partners
909 Third Avenue
New York, NY 10022
Attention: Eliot Spitzer, Esq.
Telecopy No. 212-350-2701

(b) if to Subcontractor:

c/o RCN Corporation
105 Carnegie Center
Princeton, NJ 08540
c/o David C. McCourt
Telecopy No. 609-734-3808

with copies (which shall not constitute notice) to:

c/o RCN Corporation
Legal Department
105 Carnegie Center
Princeton, NJ 08540
c/o General Counsel
Telecopy No. 609-734-3830

and to:

Swidler & Berlin, Chtd.
3000 K Street, N.W.
Washington, DC 20007
Attention: Jean L. Kiddoo
Telecopy No. 202-424-7645

or at such other address as the parties to one another in a notice given pursuant to this Section.

6.8 Headings Not Part of Agreement. The Headings and titles contained in this Agreement are for convenience only and shall not constitute any part of the Agreement reached between the Licensee and Subcontractor.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date indicated on the first page of this Agreement.

Licensee:

BARTHOLDI CABLE COMPANY, INC.

By: 

Name: ROBERT Z. LEWIS

Title: PRESIDENT

Subcontractor:

FREEDOM NEW YORK, L.L.C.

By: 

Name: HARRY ROSENBLUM

Title: PRESIDENT

Liberty Cable Co., Inc.

96-41

June 13, 1996

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Heritage Reporting

(202) 628-4888

**CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:**

*Heritage Reporting Corporation
Suite 625
1220 L Street, N. W.
Washington, DC 20005
Phone: (202) 628-4888
FAX: (202) 371-0935*

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

(1) In Re Applications of:) WT DOCKET No. 96-41
(2))
(3))
(4) LIBERTY CABLE CO., INC.) File Nos.
(5) For Private Operational Fixed) 708777 WNTT370
(6) Microwave Service Authorization) 708778 WNTM210
(7) and Modifications) 708779 WNTM085
(8)) 708780 WNTT555
(9) New York, New York) 708781 709425 WNTM212
(10)) 711937 WNTM212
(11)) 709332 (NEW)
(12)) 712203 WNTM782
(13)) 712218 WNTY584
(14)) 712219 WNTY605
(15)) 713295 WNTX889
(16)) 713300 (NEW)
(17)) 713325 (NEW)
(18))
(19) Courtroom 4
(20) FCC Building
(21) 2000 L Street, N.W.
(22) Washington, D.C.
(23) Thursday,
(24) June 13, 1996

(25) The parties met pursuant to the notice of the
Judge at 10:00 a.m.

(1) BEFORE: HON. RICHARD L. SIMPEL
(2) Administrative Law Judge
(3) APPEARANCES
(4) On behalf of Liberty Cable Co., Inc.
(5) ELIOT SPITZER, ESQUIRE
(6) Constantine & Partners
(7) 900 Third Avenue
(8) New York, New York
(9) (212) 350-3736

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(1) APPEARANCES (Cont'd.)
(2) ROBERT L. PETTIT, ESQUIRE
(3) MICHAEL K. BAKER, ESQUIRE
(4) BRYAN N. TRAMONT, ESQUIRE
(5) Wiley, Rein & Fielding
(6) 1776 K Street, N.W.
(7) Washington, D.C. 20006
(8) (202) 429-7019
(9) On Behalf of Time Warner Cable and Paragon Cable
(10) Manhattan Cablevision
(11) R. BRUCE BECKNER, ESQUIRE
(12) ARTHUR H. HARDING, ESQUIRE
(13) CHRISTOPHER G. WOOD, ESQUIRE
(14) Fleischman and Walsh, L.L.P.
(15) 1400 Sixteenth Street, N.W.
(16) Washington, D.C. 20036
(17) (202) 939-7913
(18) On Behalf of Cablevision of N.Y., City-Phase I
(19) and Cablevision of Hudson County, Inc.
(20) CHRISTOPHER A. HOLT, ESQUIRE
(21) JAMES A. KIRKLAND, ESQUIRE
(22) CHRISTOPHER J. HARVEY, ESQUIRE
(23) Hintz, Levin, Cohn, Ferris, Glowsky and Popeo, PC
(24) 701 Pennsylvania Avenue, N.W.
(25) Washington, D.C. 20004
(202) 434-7300
On Behalf of Wireless Telecommunications Bureau
JOSEPH WEBER, ESQUIRE
MARK L. KEAM, ESQUIRE
KATHERINE C. POMER, ESQUIRE
HENARD DAVENPORT, ESQUIRE
Enforcement Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554
(202) 418-1317

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APPEARANCES (Cont'd.)
On Behalf of Freedom New York, L.L.C.
(Intervenor):

DAVID MARTIN, ESQUIRE
JEAN KIDDOO, ESQUIRE
Swidler & Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007-5116
(202) 424-7834

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WITNESSES DIRECT CROSS REDIRECT RECROSS DIRE VOIR

(None)

EXHIBITS

IDENTIFIED RECEIVED REJECTED

(None)

Hearing Began: 10:00 a.m. Hearing Ended: 12:20 p.m.